

April 23, 2007

Marlene H. Dortch  
Commission Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20054

Re: FCC Notice of Proposed Rulemaking regarding communications towers and  
migratory birds, WT Docket #03-187, FCC 06-164

Dear Federal Communications Commission:

Please accept these comments from the Sierra Club on the Federal Communications Commission's (FCC) Proposed Rulemaking regarding communications towers and migratory birds. Sierra Club, founded in 1892, is America's oldest grassroots environmental organization. Sierra Club's purpose is to "explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environments." As concerned citizens, the Sierra Club's 750,000 members are committed to securing policies that protect, preserve and restore environmental quality. Many of our members are passionate supporters of wildlife and endangered species issues and many are birdwatchers.

The Sierra Club urges the FCC to immediately adopt lighting and construction rules that will end the annual mortality of millions of migratory birds at all existing and any new communications towers in the U.S. After more than three years of considering the impact of communications towers on migrating birds, it is time for the FCC to take action to stop unnecessary bird deaths.

In the documents supporting the Proposed Rulemaking, the FCC acknowledged its obligation to assess the significant environmental impact resulting from the deaths of millions of migratory birds under the National Environmental Policy Act. Many passerine bird species migrate during the spring and fall at night and are drawn, particularly during overcast nights, to lighted structures. These birds are often cannot pull themselves away from the mesmerizing effect of the lights at communication towers and circle the towers all night until they eventually hit the guy lines of the tower, the tower structure itself, other birds or become so exhausted that that drop to the ground from exhaustion, where they die or are taken by predators.

The FCC also has the authority to prevent or minimize bird deaths by regulating the lighting and construction of such towers under its own rules. Additionally, the Migratory Bird Treaty Act and the Endangered Species Act also require the FCC – like any other entity – to take measures to prevent the taking of a migratory bird, whether endangered or not, whether or not the taking is intentional. Requiring communication tower owners to undertake avoidance and mitigation measures to prevent bird deaths is the obligation of the agency charged with regulating communication towers and antennas.

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The U.S. Fish and Wildlife Agency has asked the FCC to adopt its Tower Siting Guidelines because agency staff believe the impact of bird deaths at communications towers is significant to bird populations.

The USFWS has estimated that between four and 40 million migratory birds are killed annually by the 110,000 communications towers now present across the U.S., according to analysis of 2002 data collected by the service.

This analysis, conducted on behalf of the American Bird Conservancy and other bird and animal conservation organizations (Longacre *et al*, Feb. 2005) showed that the 10 most numerous bird species killed annually by communications towers suffer tremendous losses. The Ovenbird is the species most often found dead at communications towers, according to Longacre, with the low estimate of losses numbering 489,597 and the upper estimate at 4.9 million dead in a single year. Other species suffering tremendous mortality from communications towers include the Red-eyed Vireo, Tennessee Warbler and the Common Yellowthroat. Birds on the USFWS's Birds of Conservation Concern in 2002 that also were among those suffering high mortality at towers included the Bay-breasted Warbler, the Blackpoll Warbler, the Northern Waterthrush, the Northern Parula, the Connecticut Warbler, the Cape May Warbler, the Black-throated Blue Warbler and the Chestnut-sided Warbler. Overall, according to Longacre's analysis, over 60 Birds of Conservation Concern are victims of communication tower kills each year.

With moderate and reasonable changes to its rules regarding existing and communication towers, based on the best scientific advice already provided to the FCC during its Notice of Intent period in 2003 and by the USFWS, the Commission could do much to prevent bird deaths at regulated antennas.

Generally, the Sierra Club supports the adoption by the FCC of the following procedures and rules to make communication towers more bird-safe.

A. Applicants for new antennas should try to co-locate the structure with an existing antenna and keep the tower height under 200 feet to avoid having to light the tower for navigation safety.

B. If the new tower structure can't be kept below 200 feet, the FCC should require that medium intensity white strobe lights be used for navigation safety, rather than steady red "obstruction" lights wherever possible.

C. In situations where the antenna tower must be located in populated areas within three nautical miles of an airport, where for safety, zoning or other reasons, white strobe lights can't be used, medium intensity red strobe lights should be required.

D. For existing registered communications towers, those that use red steady lights at night should be required to move to the medium intensity white or red strobe lights or fast blinking lights during a five-year phased-in program.

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E. Guy wires should not be used in the construction of any new tower under 500 feet tall without certification from a qualified engineer specifying that a lattice or monopole design cannot be used in that situation. The FCC should require new tower applicants to justify their use of guy wires for safety, cost-savings or other practical construction considerations.

By requiring the use of strobe lights instead of steady burning lights and switching to white from red lights, the FCC will go a long way toward preventing unnecessary bird kills at communication towers. Elimination of the use of guy wires – often a deadly obstacle for migrant birds – also will reduce the taking of individuals of bird species. The combination of steady red lights and lethal guy wires account for a high toll of avian migrants and the simple switch of structure and light will change that annual equation of death for migrant birds significantly.

Please refer to comments submitted previously and during this public comment period which document the significance of tower mortality to the health of many bird populations, which argue the legal standing of the FCC to act to reduce bird mortality and similar mitigation measures.

Most respectfully submitted,

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